

BORA LASKIN LAW LIBRARY



3 1761 03868 0161

Materials
on
LABOUR ARBITRATION
IN
CANADA

Faculty of Law
University of Toronto


January, 1990
revised 1993

BORA LAMONT LAW LIBRARY
UNIVERSITY OF TORONTO

Materials
on
LABOUR ARBITRATION
IN
CANADA

Faculty of Law
University of Toronto

January, 1990
revised 1993



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

(i)

TABLE OF CONTENTS

Topic 1.	The Nature and Contents of the Collective Agreement.	1
Topic 2.	The Grievance Procedure: Purpose and Machinery.	9
Topic 3.	After Exhaustion of any Grievance Procedure, Why Not Ultimate Enforcement by Court Action or Strike?. . .	22
Topic 4.	The Legislatures' Choice of Arbitration to Determine Grievances: The Statutory Quid Pro Quo and the Result in Collective Agreements.	26
Topic 5.	Parties to the Processes of Determining Grievances . . .	32
Topic 6.	The Nature of the Arbitrator's Function: Mediator, Judge, or Labour Relations Policy-maker?	39
Topic 7.	The Significance of the Parties' Past in Arbitral Reasoning	43
A.	Significance of the Parties' Past in Interpreting Written Terms of the Agreement	43
B.	Significance of the Parties' Past in Barring Enforcement of Written Terms of the Agreement.	51
C.	Significance of the Parties' Past in Creating Enforceable Unwritten Terms of the Agreement	57
Topic 8.	The Significance of the General Law in Arbitral Reasoning.	71
A.	Statute Law.	71
B.	Canadian Charter of Rights and Freedoms.	79
C.	Judge-Made Law	88
Topic 9.	The Significance of the Employer's "Unfair" or "Discriminatory" Conduct in Arbitral Reasoning.	93
Topic 10.	The Significance of Previous Awards in Arbitral Reasoning	102
A.	Different Parties, Different Provisions, Same Issue	102
B.	Same Parties, Same Provisions, Same Issue.	104

Topic 11.	Remedial Power of Arbitrators	106
A.	Remedial Power After Determining Breach of Collective Agreement	106
B.	Power to Rectify Collective Agreement Before Determining Breach	111
Topic 12.	Labour Arbitration Procedures	118
A.	An Overview	118
B.	Sole Arbitrator or Tripartite Board?	119
C.	Choosing the Sole Arbitrator or Board Members	120
D.	Conduct of the Hearing	126
E.	Evidence Problems at the Hearing	138
F.	Argument	146
G.	Considering, Drafting and Issuing the Award	146
H.	Criticisms of the Process, and Legislatures' Responses	150
Topic 13.	Discovery Procedures	160
Topic 14.	Procedural Defects Denying Arbitrability: Preliminary Objections	160
A.	The Arbitrator's Power of Determination.	160
B.	The Formal Grievance Documents as Defining the Arbitrable Issue	160
C.	Individual v. Union or Employer Grievances	166
D.	Timeliness	177
E.	Grievor No Longer Wishes to Proceed.	192
F.	One Hearing or Two?.	199
Topic 15.	The End of Arbitral Authority: "Functus Officio"	202
Topic 16.	Seniority.	206
A.	Introduction	206
B.	Application of Seniority	209

(iii)

C.	Accumulation of Seniority	214
D.	Termination of Seniority.	220
E.	Promotion and Layoff Out of Seniority: Problems of Arbitral Review	225
Topic 17.	Management's Rights and Industrial Change.	243
A.	Introduction	243
B.	Subcontracting	246
C.	Work Assignment.	255
D.	Compulsory Retirement.	264
E.	Other Issues	276
Topic 18.	Disciplinary and Non-Disciplinary Responses of Employer to Employee's Conduct	276
A.	The Spectrum of the Employer's Possible Responses.	276
B.	Theories of Disciplinary Responses	296
C.	Some Examples of Occasions for Discipline.	298
D.	Due Process Limitations on Discipline	313
E.	Arbitral Authority to Review the Employer's Response	320
F.	Arbitral Authority to Modify the Employer's Response	324
G.	Arbitral Standards for Assessing Propriety of the Employer's Response	325
Topic 19.	Judicial Intervention in the Labour Arbitration Process	357
A.	Judicial Enforcement of the Award	357
B.	Judicial Review of the Award	359

